THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HP TUNERS, LLC, a Nevada limited liability company, Plaintiff, v. KEVIN SYKES-BONNETT, SYKED ECU TUNING INCORPORATED, a Washington corporation, and JOHN MARTINSON Defendants.	Cause No. 3:17-cv-05760 BHS **DECLARATION OF JOHN MARTINSON IN FURTHER SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I, John Martinson, hereby declare as follows:

1. I am one of the named Defendants in the above-captioned matter and and I helped develop the Syked ECU Tuning software that is at issue in this lawsuit. I am familiar with the content and operation of the Syked ECU Tuning software that is at issue in this lawsuit.

2. Attached is a true and correct copy of an Application Note, AN_407 "D3XX .NET Programmers Guide" dated November 1, 2016 (the "Programmer's Guide") issued by Future Technology Devices International Limited ("FTDI") of Glasgow, United Kingdom, a maker of various interfaces for use with USB devices. (Exhibit "A")

MANN LAW GROUP PLLC
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500

3. The Programmer's Guide is a freely distributed document that FTDI makes publicly available to programmers to encourage them to incorporate FTDI's chips into various third party computer hardware products. It is in FTDI's interest to make it as easy as possible for programmers to learn to program with FTDI chips to encourage their adoption. The Programmer's Guide that is published by FTDI is freely available to the public and is not governed by any obligations of confidentiality.

4. At page 12 of the Programmer's Guide are instructions provided by FTDI that show how to use their "OpenBySerialNumber" command to enable communication with USB devices. This instruction uses the general command "FT_STATUS OpenBySerialNumber(string szSerialNumber)" which command is incorporated into prior versions of the Syked ECU Tuning software. That command "opens" a connection to a hardware device, such as an HPTuners cable, connected to any Windows computer using a USB port.

5. The "OpenBySerialNumber" command that appears in the FTDI Programmer's Guide is openly documented and freely available for use by the public. No command in the FTDI Programmer's Guide,

Mann Law Group pllc
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500

including the "OpenBySerialNumber" command, is proprietary to HP Tuners nor any entity other than FTDI.

6. As further explained in the FTDI Programmer's Guide, the "string szSerialNumber" portion is a variable that may be assigned a value (a "Name") corresponding to any hardware device plugged into the Windows computer system. For example, if a keyboard is plugged into a USB port of the Windows computer system, that keyboard will have (or be assigned by the system) a unique "DeviceID" or "Name" so that other components of the Windows computer system can communicate with the keyboard. Likewise, if a Syked Eliminator cable (or an HP Tuners cable) is plugged into the Windows computer system, that cable will have a unique "DeviceID" or "Name" so that other components of the Windows computer system can communicate with the cable.

7. The "OpenBySerialNumber" command opens a communication link to whatever hardware device is identified by the value (or "Name") assigned to the "string szSerialNumber" portion of the command. In other words, a "Name" is assigned to the code "szSerialNumber" and the "OpenBySerialNumber" command establishes a communication link to the hardware device identified by that value. Often, the code to be assigned to the "szSerialNumber" variable for any

Mann Law Group pllc
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500

particular hardware device may be easily obtained from the device itself, including but not limited to the tuning cable devices manufactured and sold by HP Tuners.

8. The process for obtaining the "Name" of a USB hardware device plugged into a USB port is trivial for anyone with even moderate computer skills. More specifically, to find the "Name" or "DeviceID" of any USB hardware device, including the tuning cable devices manufactured and sold by HP Tuners, the hardware device is first plugged into the USB port on a Windows based PC. Once the hardware device is plugged in and connected, the user "right clicks" the "Start" menu icon of the Windows computer system, which brings up the menu depicted in Exhibit "B" to this Declaration.

9. From that menu, the user clicks the "Device Manager" selection (see Exhibit "B"), which launches the Microsoft Windows Device Manager. The Device Manager is a core feature of the Microsoft Windows operating system and is in no way associated with HP Tuners. Launching the Windows Device Manager brings up a listing of all devices currently connected to the Windows computer system. Hardware devices that are connected to the Windows computer system through a USB port

Mann Law Group pllc
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500

are shown under the heading "Universal Serial Bus Controllers". An example of such a Device Manager listing is shown in Exhibit "C":

10. In the list shown in Exhibit "C", the entries "HP Tuners MPVI Channel A" and "HP Tuners MPVI Channel B" identify an HP Tuners cable connected to the Windows computer system. It is well known by anyone who programs with an FTDI chip that some devices use two "channels" to communicate with a USB hardware device using an FTDI USB device controller. That is why there are two entries for the same USB hardware device. See Exhibit "C".

11. Selecting either "HP Tuners MPVI Channel A" or "HP Tuners MPVI Channel B" and "right clicking" brings up a context menu that offers several different options, including "Properties" option. See Exhibit "D".

12. Selecting the "Properties" option from that context menu and then selecting the "details" tab from the choices that subsequently appear reveals the "Device ID" of that hardware device. Shown in Exhibits "E" and "F" are the "details" tabs for both the HP Tuners MPVI channels.

13. As is apparent in those two images, the HP Tuners "MPVI" cable identifies itself using the Name "**HPT00021**" for each of Channels "**A**" and "**B**". Thus, the HP Tuners "MPVI" cable announces itself to the

Mann Law Group pllc
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500

Windows computer system for communication using the Device IDs of "HPT00021A" and "HPT00021B" (for each of Channel A and Channel B, respectively). See Exhibits "E" and "F".

14. The codes which appear in Dr. Staroswiecki's Expert Report at paragraph 31 are merely the publicly disclosed Device IDs for the HP Tuners MPVI cable shown above. Accordingly, those two codes are neither secret nor kept confidential to HP Tuners. In fact, quite the contrary. Unless those two codes are made publicly discoverable, the HP Tuners MPVI cable could not operate in the Windows computer environment.

15. The Device IDs shown above can be readily ascertained by anyone with moderate computer skills using a Windows-based computer, and they are not confidential information.

16. The two device Names identified above ("HPT00021A" and "HPT00021B") have been incorrectly referred to as "files." In fact, those two terms are only "names" that the HP Tuners hardware cable publishes to the Windows computer system so that it, and any software executing on it, can communicate with the hardware cable.

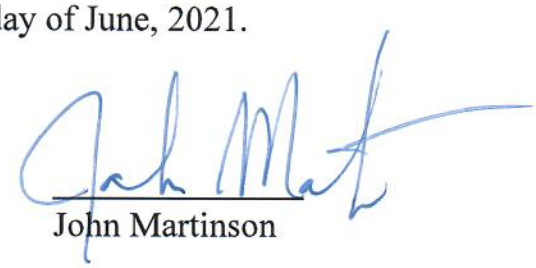
17. In his expert report at paragraph 33, Dr. Staroswiecki assumes that the presence of the publicly available Device IDs for HP

Mann Law Group pllc
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500

Tuners' MPVI cable "implies that Syked was using HPTs communications protocols." Dr. Starowswiecki is wrong. As shown above, the two codes that existed (and have long since been removed) in the Syked Tuning software were publicly available to any user with minimal computer skills.

18. I declare under under penalty of perjury, that all statements made herein of my own knowledge are true and that all statements made herein on information and belief are believed to be true.

Dated this 2nd day of June, 2021.



John Martinson

MANN LAW GROUP PLLC
403 Madison Ave. N. Ste. 240
Bainbridge Island, WA 98110
Phone: 206.436.8500